

**A. H. Hansen Sales, Ltd. and Hawaii Teamsters and Allied Workers, Local 996, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.** Case 37-CA-2847

May 7, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On June 12, 1990, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 37-RC-2990. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 15, 1991, the General Counsel filed a Motion for Summary Judgment. On March 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a timely response on April 8, 1991, and the General Counsel filed a brief in reply to the Respondent's response on April 22, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that it refused to furnish the Union with certain requested information, but denies that the information is relevant and necessary to the Union's role as bargaining representative, and that the Union requested bargaining and that it has refused. The Respondent attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.<sup>1</sup> See *Pitts-*

*burgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). The Respondent, as noted, denies that the information requested is relevant and necessary to the Union's role as exclusive bargaining representative of the unit employees. It is well established, however, that the employees' wage and employment information sought by the Union<sup>2</sup> is presumptively relevant for purposes of collective bargaining and must be furnished on request.<sup>3</sup> The Respondent has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union. Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

April 12, 1990, requested the Respondent to recognize and bargain with it, and that since on or about April 30, 1990, the Respondent has refused. However, the General Counsel has submitted copies of letters dated September 26, 1989, and April 12, 1990 (with proof of service by certified mail on the Respondent attached thereto), sent by the Union to the Respondent, requesting bargaining and certain specified information. The General Counsel also submitted a copy of an April 30, 1990 letter from Respondent to the Union, containing the Company's letterhead and signed by the Respondent's president, John Kammeier, acknowledging receipt of the Union's April 12, 1990 letter, but refusing the Union's bargaining and information request because it disagreed with the Board's decision in the underlying representation proceeding, and because it doubted that a majority of its employees freely chose the Union to represent them. The Respondent does not contest the authenticity of the letters. It contends, in its brief to the Board, only that the letters are inadmissible as evidence in this summary judgment motion because they are "unsubstantiated by affidavit or otherwise." The Respondent's contention is without merit. The Board's summary judgment rules do not require that a Motion for Summary Judgment be accompanied by supporting affidavits. See Sec. 102.24 of the Board's Rules and Regulations, as amended, 54 Fed. Reg. 38515 (Sept. 19, 1989). Further, even in court proceedings, under Rule 56(a) of the Federal Rules of Civil Procedure, a party moving for summary judgment may do so with or without supporting affidavits, and "[t]he court may consider any material that would be admissible or usable at trial." Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2721. In these circumstances, we find that the Respondent has refused to bargain with the Union, as alleged in the complaint. Further, the Respondent's April 30, 1990 letter to the Union makes clear that the Respondent is contending that it is under no legal obligation to bargain with the Union solely on the grounds that the certification is invalid. Accordingly, we find that the Respondent's denials raise no material issues of fact warranting a hearing.

We also find no merit in the affirmative defenses raised by the Respondent in its answer. The charge in this case was filed on May 11, 1990, less than 2 weeks after the Respondent's unlawful refusal to bargain, and is therefore not barred by the 10(b) 6-month limitation period, as asserted by the Respondent. Further, the documentary evidence submitted by the General Counsel in support of the motion indicates that the Respondent, contrary to its assertion, was duly served by certified mail with a copy of the complaint. The remaining affirmative defenses—that the complaint fails to state a claim on which relief can be granted, that the Board's practices and procedures in this case do not comply with the necessary requirements for a hearing under the Act, that the Board's actions in this case are arbitrary and capricious, and that the complaint makes no reference to the record in the underlying representation case—raise no material issues of fact requiring a hearing and do not preclude summary judgment in this case.

<sup>2</sup>The Union requested the Respondent to furnish it with (1) a list of each employee within the bargaining unit, including his/her birth date, sex, marital status, date of hire with the company, salary, job classification and job description (if available); (2) copy of house rules, policies, and any other written documents affecting the Respondent's employees and their employment with the Respondent; and (3) a detailed listing of any and all benefits employees enjoy including, but not limited to, medical plan (carrier, type of plan, employer's cost and employee's share of cost, if any), and retirement plan (carrier, type of plan, plan document, contribution rate for both employer and employee).

<sup>3</sup>See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

<sup>1</sup>In its answer the Respondent, inter alia, denies pars. 7(a) and (b) of the complaint which allege that the Union on or about September 26, 1989, and

## FINDINGS OF FACT

## I. JURISDICTION

The Respondent, a Hawaii corporation with an office and place of business in Honolulu, Hawaii, is engaged in the business of trucking and warehousing. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its Honolulu, Hawaii facility products, goods, and materials valued in excess of \$50,000 directly from points and places located outside the State of Hawaii. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held on June 23, 1989, the Union was certified on April 4, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer as tractor drivers, truck drivers, forklift drivers, offloaders, warehousemen, meat handlers, janitors, maintenance employees, and checkers; but excluding all accounting and confidential employees, professional employees, guards and all clerical employees, customer service employees, sales employees, supervisors, and all other employees. The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusals to Bargain*

On or about September 26, 1989, and again on April 12, 1990, the Union requested the Respondent to bargain and to furnish it with information and, since on or about April 30, 1990, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after April 30, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union with the requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, A. H. Hansen Sales, Ltd., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Hawaii Teamsters and Allied Workers, Local 996, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Employer as tractor drivers, truck drivers, forklift drivers, offloaders, warehousemen, meat handlers, janitors, maintenance employees, and checkers; but excluding all accounting and confidential employees, professional employees, guards and all clerical employees, customer service employees, sales employees, supervisors, and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Honolulu, Hawaii, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Officer in Charge for Subregion 37, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Officer in Charge in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hawaii Teamsters and Allied Workers, Local 996, affiliated with

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by the Employer as tractor drivers, truck drivers, forklift drivers, offloaders, warehousemen, meat handlers, janitors, maintenance employees, and checkers; but excluding all accounting and confidential employees, professional employees, guards and all clerical employees, customer service employees, sales employees, supervisors, and all other employees.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

A. H. HANSEN SALES, LTD.